Supreme Court, U.S.
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No. 82-1367

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ROADWAY EXPRESS, INC.,

Petitioner,

v.

LAWRENCE G. WARREN,

Respondent.

ON WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF GEORGIA

BRIEF OF PETITIONER

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June 9, 1983

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QUESTIONS PRESENTED

1. Whether the Georgia courts unconstitutionally failed to give Full Faith and Credit to Tennessee law in awarding Respondent Georgia workers' compensation benefits when he had already received such benefits under Tennessee law and had irrevocably elected to proceed under that state's law.

2. Whether the Georgia courts acted unconstitutionally in awarding Georgia workers' compensation benefits to Respondent since Georgia does not have a significant contact or aggregration of contacts with the parties and the occurrence or transaction involved in this case.

DESIGNATION OF CORPORATE RELATIONSHIPS

Roadway Express, Inc., filing this its brief on writ of certiorari to the Court of Appeals of Georgia, as petitioner in this proceeding, states that:

This is its third Designation of Corporate Relationships. The Designation that was filed originally on February 14, 1983 is currently accurate.

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ON WRIT OF CERTIORARI TO
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BRIEF OF PETITIONER

OPINION BELOW

The opinion of the Court of Appeals of Georgia is reported at 163 Ga.App. 759, 295 S.E.2d 743 (1982). There is no reported opinion of the Supreme Court of Georgia, which denied petitioner's application for certiorari on November 16, 1982.

STATEMENT OF JURISDICTION

The opinion of the Georgia Court of Appeals was entered on September 16, 1982. Petitioner's motion for rehearing was denied by the Georgia Court of Appeals on

October 6, 1982. Petitioner subsequently filed its application for certiorari in the Supreme Court of Georgia, which was denied on November 16, 1982. Petitioner filed its petition for writ of certiorari in this Court on February 14, 1983, within the time allowed by law. The jurisdiction of this Court was invoked under 29 U.S.C. § 1257(3). This Court granted Petitioner's petition for a writ of certiorari to the Court of Appeals of Georgia on April 25, 1983.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following constitutional and statutory provisions involved in this case are reproduced as part of Appendix B to petitioner's petition for writ of certiorari to this Court or are set forth in this brief:[1]

1. U.S. Const. art. IV, § 1.
2. U.S. Const. amend. XIV, § 1.
3. Ga. Code Ann. (Harrison) § 6-803 (1975) [now codified at Official Code of Ga. Ann. § 5-6-38 (1982)].
4. Ga. Code Ann. (Harrison) § 114-404 (1973) [now codified at Official Code of Ga. Ann. § 34-9-261 (1982)].
5. Ga. Code Ann. (Harrison) § 114-411 (1973) [now codified at Official Code of Ga. Ann. § 34-9-242 (1982)].
6. Tenn. Code Ann. (Bobbs-Merrill) § 50-902 (1977) [now codified at Tenn. Code Ann. § 50-6-102 (1983)].

[1]Petitioner incorrectly included *present* versions of some of the listed Tennessee and Georgia statutes in its Petition Appendix B. Petitioner has included the versions of these statutes in force on the date of Respondent's accident in the Appendix to this brief.

7. Tenn. Code Ann. (Bobbs-Merrill) § 50-908 (1977) [now codified at Tenn. Code Ann. § 50-6-108 (1983)].

8. Tenn. Code Ann. (Bobbs-Merrill) § 50-914 (1977) [now codified at Tenn. Code Ann. § 50-6-112 (1983)].

9. Tenn. Code Ann. (Bobbs-Merrill) § 50-917 (1977) [now codified at Tenn. Code Ann. § 50-6-115 (1983)].

10. Tenn. Code Ann. (Bobbs-Merrill) § 50-1005 (1977) [now codified at Tenn. Code Ann. § 50-6-205 (1983)].

11. Tenn. Code Ann. (Bobbs-Merrill) § 50-1007 (1977) [now codified at Tenn. Code Ann. § 50-6-207 (1983)].

This case draws in question the constitutionality of Ga. Code Ann. (Harrison) § 114-411 (1973) [now codified at Official Code of Ga. Ann. § 34-9-242 (1982)].

STATEMENT OF THE CASE

I. PROCEEDINGS BELOW

Lawrence G. Warren (hereinafter "Respondent"), employed by Roadway Express, Inc. (hereinafter "Petitioner"), was injured on October 20, 1978 in an on-the-job accident in Indiana.[2] Respondent was then a resident of Tennessee, working for Petitioner out of Nashville, Tennessee. (P-A-17a) Petitioner and Respondent entered into an agreement to pay and receive benefits under the

[2]Petition Appendix A, p. 17a (hereinafter referred to as "P-A" and by page); P-A-16a-23a, being the Georgia State Board of Workers' Compensation Award (hereinafter "Georgia Award").

workers' compensation laws of Tennessee on November 2, 1978, whereby the parties elected to come under the workers' compensation laws of Tennessee. (P-A-17a and 18a; J-A-8-10, 27-28; R-116) Workers' compensation benefits were paid pursuant to this agreement and election for the amounts allowed under Tennessee law from October 21, 1978 through October 12, 1979. (P-A-18a; J-A-9-10, 29; R-116)

Petitioner, while affirming application of Tennessee law, terminated Respondent's benefits in Tennessee on October 12, 1979 and filed its complaint in the Chancery Court of Davidson County, Tennessee, under applicable provisions of Tennessee law, to adjudicate subsequent cessation of Respondent's disability by virtue of medical improvement in his condition. (J-A-16, 30-33; R-116) (*See* Tenn. Code Ann. (Bobbs-Merrill) § 50-1005 (1977)) [now codified at Tenn. Code Ann. § 50-6-205 (1983), *infra*, p. 6a-7a.]

On October 15, 1979, three days after his benefits were stopped, Respondent signed a form for workers' compensation benefits in Georgia and thereafter filed his claim. (J-A-3-4) Petitioner controverted Respondent's claim, asserting, among other defenses, acceptance of the Tennessee benefits as a bar. (J-A-5-6) On August 6, 1980, following a hearing, the Georgia Board of Workers' Compensation awarded Respondent supplemental benefits to those in Tennessee. (P-A-16a-23a) The Georgia Award found that the parties had agreed and elected to come under the workers' compensation laws of Tennessee and found that the benefits paid from 1978 to 1979 were properly paid under those laws. (P-A-17a-18a) The award further allowed credit for the benefits paid under Tennessee law to Respondent. (P-A-23a) The administrative law judge nevertheless concluded that Georgia was not barred

from granting a supplemental compensation award. (P-A-20a, 22a)

Petitioner appealed this award to the Full Board of Workers' Compensation in Georgia, asserting, among other grounds, the unconstitutionality of the failure of the administrative law judge to give Full Faith and Credit to the prior award of compensation under Tennessee law in violation of U.S. Const. art. IV, § 1, and in violation of due process of law under U.S. Const. amend XIV, § 1. (J-A-52-53) No appeal from the findings of fact, conclusions of law or allowance of credit for benefits paid under Tennessee law was taken by Respondent.[3] Thereafter, the Full Board, by award dated January 8, 1981, affirmed the findings and conclusions of the administrative law judge, *de novo*. (P-A-6a) Petitioner then appealed to the Superior Court of Fulton County, Georgia, acting as an appellate court, again asserting, among other grounds, failure of the Georgia Board to give Full Faith and Credit to the prior Tennessee award and denial of due process to Petitioner. (J-A-54-55) Again, Respondent took no appeal from the award of the Full Board.

On December 1, 1981, the Superior Court of Fulton County, Georgia, through the Honorable Sam Phillips McKenzie, affirmed the Board Award. (P-A-5a) Thereafter, Petitioner filed its application for appellate review to the Supreme Court of Georgia, which that Court

[3]That Respondent has taken the detriment, as well as the benefit, of Tennessee law is further amply illustrated by the granting of summary judgment to Petitioner in Indiana litigation instituted by Petitioner to recover its subrogation rights under the Tennessee Act for payments made thereunder. *Roadway Express, Inc. v. Lawrence G. Warren*, No. H 79-490 (N.D. Ind. Feb. 9, 1983), Supplemental Brief of Petitioner in Support of Petition for Certiorari at pp. 1a-11a (hereinafter "SB" and by page number). The *res judicata* effect of the Tennessee and Georgia proceedings was evidently not considered by the Court in the Indiana litigation.

transferred to the Court of Appeals of Georgia on January 7, 1982. (P-A-4a) On January 26, 1982 the Court of Appeals of Georgia granted Roadway's application for appellate review. (P-A-3a) Following notice of appeal, enumeration of errors, and argument, the Court of Appeals of Georgia issued its opinion on September 16, 1982, reported at 163 Ga. App. 759, 295 S.E.2d 743 (1982), wherein the Court upheld the exercise of jurisdiction by the Georgia Board and entry of a supplemental award of compensation and affirmed the lower court. (P-A-8a-15a) Petitioner thereupon filed a motion for rehearing before the court, which was denied. (P-A-2a) Petitioner then applied for the writ of certiorari to the Supreme Court of Georgia, which was denied on November 16, 1982. (P-A-1a)

On February 14, 1983, Petitioner filed its petition for writ of certiorari with this Court. On April 25, 1983 this Court granted Petitioner's application for writ of certiorari to the Court of Appeals of Georgia.

II. STATEMENT OF FACTS

Respondent was first employed by Petitioner as an over the road truck driver on March 25, 1963. At that time, Respondent was working for Petitioner out of Atlanta, Georgia and continued to do so until 1967. (P-A-17a) In 1967, Respondent had an on-the-job accident in Petitioner's employ and was out of work because of the accident from 1967 to 1971. During this time, he received benefits under the workers' compensation laws of Georgia. (P-A-17a) While Respondent was disabled, Petitioner had a change of operations, cutting the number of drivers operating in Atlanta. Respondent asked for and received an assignment to Nashville, Tennessee on August 17, 1969. (P-A-17a-18a; J-A-20, 25; R-122) Respondent

returned to work for Petitioner in Nashville, Tennessee, on March 9, 1971. (R-178) Before he could be reemployed, Respondent was required to take a two-day medical examination given by Petitioner. (J-A-13) He was only guaranteed to be reemployed if he passed the physical. (J-A-24) He returned to work at a different wage and on a different driving run. (J-A-23-24) From sometime in 1972 until June 1, 1976, Respondent worked on a "peddle run" from Nashville, Tennessee to Columbia, Tennessee. (J-A-14)[4] Beginning on June 1, 1976, and continuing until the date of his accident on October 20, 1978, Respondent was on a "run" between Nashville, Tennessee and Chicago, Illinois and encompassing only the states in between. (J-A-14, 17, 48-49; R-75) While on this run, on October 20, 1978, Respondent was involved in a vehicular accident with another truck in St. John, Indiana. (J-A-15, P-A-18a)

Respondent moved to Nashville, Tennessee in 1971, when he returned to work for Petitioner, and was living in Tennessee on the date of his accident. (J-A-14, 16, 26; R-101) In September, 1979, Respondent moved to Florida. (J-A-19)

Following Respondent's accident, and after he had returned to Nashville, Tennessee, Respondent went to Petitioner's terminal and signed an agreement for payment of compensation under the workers' compensation laws of the State of Tennessee. (J-A-8-10, 18, 27-28; R-116) He knew that the form was a Tennessee form for workers' compensation benefits; he read the form and no one tricked him into signing it. (J-A-18) Further, it was stipulated by the parties that the workers' compensation benefits

[4]A peddle run is confined to a driving radius of 75 miles from the home terminal (Nashville). (J-A-51-52; R-115-116, 179).

paid were paid under the Workmen's Compensation Act of Tennessee. In fact, counsel for Respondent said, in connection with stipulating payments under the Tennessee Act: "We have an executed form and it is correct." (J-A-9) The parties also stipulated that Respondent was paid compensation under Tennessee law from October 21, 1978 through October 12, 1979 at the rate of $100.00 per week. (P-A-17a, J-A-9-10) Medical expenses were also paid. (J-A-9-10, 29; R-116) Respondent hired his counsel, Mr. Pepper, before the time that he and Petitioner had a dispute over compensation benefits. (J-A-17) Respondent and his counsel had discussed his workers' compensation claim before Petitioner terminated his benefits in Tennessee. (J-A-20)

Based upon these stated facts, the Georgia Award found that: ". . . [T]he parties herein involved entered into an agreement whereby the claimant elected to come under the Workers' Compensation Laws of Tennessee. The claimant received benefits pursuant to this agreement. . . " (P-A-18a) The Georgia Board then formulated the legal issue as being: ". . . [W]hether or not the claimant's election and actual receipt of compensation benefits under Tennessee law from October 21, 1978 through October 12, 1979 bars him from seeking a second recovery in Georgia." (P-A-19a) The administrative law judge thereupon concluded that: ". . . [C]laimant's election and receipt of compensation benefits under Tennessee law does not preclude the granting of a supplemental award. . . " (P-A-22a, Finding 4) However, the Georgia Board allowed for credit for all benefits paid under Tennessee law. (P-A-23a) Respondent has not appealed from these findings of fact.

SUMMARY OF ARGUMENT

The rights of Petitioner and Respondent under the prior Tennessee workers' compensation proceedings have been finally determined. Respondent elected to receive Tennessee workers' compensation benefits as his exclusive remedy in this case, and this irrevocable election to proceed solely under Tennessee law is *res judicata,* and therefore final and binding on Respondent. All necessary elements of Respondent's Tennessee claim and irrevocable election to proceed under Tennessee law were either stipulated by the parties in this case or found as a matter of fact in the Georgia proceedings. Respondent has never filed any cross-appeal from any of the findings in the Georgia proceedings which are adverse to him, and the findings are therefore final.

The Tennessee proceedings which have been treated by the parties and found in the Georgia Award to be final and *res judicata* of the rights of the parties under Tennessee law should be given Full Faith and Credit in this case. Under either *Magnolia Petroleum Co. v. Hunt,* 320 U.S. 430, 64 S.Ct. 208 (1943) or *Industrial Commission of Wisconsin v. McCartin,* 330 U.S. 622, 67 S.Ct. 886 (1947), the Tennessee proceedings are entitled to Full Faith and Credit. The Tennessee exclusive remedy statute, as interpreted by decisions of the Supreme Court of Tennessee, has "unmistakable language" precluding a second award of compensation where a workers' compensation claimant has elected to proceed under Tennessee law. Neither of these cases was overruled by a majority of the Court in *Thomas v. Washington Gas Light Co.,* 448 U.S. 261, 100 S.Ct. 2647 (1980), and a similar result is supported by a majority of the Justices in that case. The overwhelming interests in the parties to this proceeding are in Tennessee, and Georgia has at best only a slight interest in this case.

The Full Faith and Credit Clause of the U.S. Constitution therefore bars Georgia's supplemental award of workers' compensation benefits to Respondent.

Moreover, the Tennessee exclusive remedy statute is itself entitled to Full Faith and Credit in Georgia. Georgia's interest in this case is only casual, and there is no rational basis for allowing Georgia to make a second award of workers' compensation benefits to Respondent. Respondent exercised his workers' compensation remedy in Tennessee, and Georgia has no legitimate public policy which would be furthered by allowing it to ignore the overwhelming state interest of Tennessee in this case.

The second award of compensation entered in Georgia also denies Petitioner due process. In order for Georgia to apply its law in this case in a constitutionally permissible manner, it is necessary for Georgia to have a significant contact or significant aggregation of contacts with the parties and the transaction or occurrence involved. The only contact with Georgia in this case is the fact that fifteen years prior to the accident Petitioner and Respondent entered into a contract of employment in Georgia. Georgia's use of this tenuous contact to justify its second award of benefits to Respondent is fundamentally unfair and unjustifiably infringes upon the legitimate interest of Tennessee in having its workers' compensation laws be the exclusive remedy of parties who choose to come under its law. Georgia's choice of its law in contravention of the clearly stated public policy of Tennessee therefore violates the Due Process Clause of the U.S. Constitution.

ARGUMENT AND CITATION OF AUTHORITY

I.

THE RIGHTS OF THE PARTIES UNDER TENNESSEE LAW HAVE BEEN FINALLY DETERMINED.

Tenn. Code Ann. (Bobbs-Merrill) § 50-908 (1977) [now codified at Tenn. Code Ann. § 50-6-108 (1983)] provides that the rights and remedies of an employee subject to the workers' compensation laws of Tennessee exclude all other rights and remedies of such employee on account of personal injury or death by accident arising out of and in the course of employment. The Tennessee Supreme Court has held in unmistakable language that this exclusivity results in a workers' compensation claimant making an irrevocable election to proceed under the workers' compensation law of the state in which he first receives benefits. *True v. Amerail Corp.*, 584 S.W.2d 794 (Tenn. 1979); *Tidwell v. Chattanooga Boiler & Tank Co.*, 163 Tenn. 420, 43 S.W.2d 221 (1931).[5] The record in this case shows that Respondent entered into an agreement under the workers' compensation laws of Tennessee and received benefits under that state's law. Under Tennessee law, receipt of those benefits is Respondent's exclusive remedy and his election of that remedy is irrevocable and final.

A review of the material element of a claim for workers' compensation in Tennessee reveals that all of these elements have been met in this case and this determination is *res judicata*, and therefore final and binding on Respondent The first element necessary for recovery of benefits under Tennessee law is that Respondent sustained an injury by accident arising out of and in the course of his

[5]These cases are discussed completely in Part II (A) of the brief, *infra*, p. 15.

employment with Petitioner which caused either disablement or death. Tenn. Code Ann. (Bobbs-Merrill) § 50-902 (1977) [now codified at Tenn. Code Ann. § 50-6-102 (1983)]. This fact was stipulated by the parties at the initial hearing before the administrative law judge, although there was disagreement between the parties as to the length of disability sustained by Respondent. (R-48-49) For Tennessee workers' compensation benefits to be payable to Respondent, it was also necessary that Tennessee have jurisdiction over this case, since Respondent's accident occurred outside of the State of Tennessee. Tenn. Code Ann. (Bobbs-Merrill) § 50-917 (1977) [now codified at Tenn. Code Ann. § 50-6-115 (1983)] provides that if an employee suffers an injury outside of the state he is entitled to Tennessee benefits if either the employment was principally localized within Tennessee or the contract of hire was made in Tennessee. Although the Court of Appeals of Georgia held that, for purposes of the Georgia Workers' Compensation Act, the contract of employment between Petitioner and Respondent was made in Georgia, this issue was strongly contested by Petitioner. However, Respondent has conceded in his brief in opposition to the petition for certiorari herein that Respondent's employment was principally localized within Tennessee.[6] It has thus been admitted that Tennessee had jurisdiction over this workers' compensation claim. The final basic element of a Tennessee workers' compensation claim necessary for consideration in this case is the requirement implied by Tennessee case law that a workers' compensation claimant elect to proceed under Tennessee law as his exclusive remedy for recovery of workers' compensation benefits. *True v. Amerail Corp.*, 584 S.W.2d 794 (Tenn. 1979); *Tidwell v. Chattanooga Boiler & Tank Co.*, 163 Tenn.

[6]Brief in Opposition to Petition for Writ of Certiorari, p. 11.

420, 43 S.W.2d 221 (1931). The Georgia administrative law judge found as a matter of fact that Petitioner and Respondent had agreed and elected to come under the workers' compensation laws of Tennessee and that benefits had been paid to Respondent from 1978 to 1979 under Tennessee law. This finding was affirmed by the Full Board of Workers' Compensation of Georgia, and no appeal or cross-appeal has been taken by the Respondent from this finding.

It is clear that all of the above necessary elements of Respondent's Tennessee claim and irrevocable election to proceed under Tennessee law have been met and that these matters are *res judicata* in this case. All of the material elements except for Respondent's election to proceed under Tennessee law were stipulated by the parties. These oral stipulations before the administrative law judge are binding on the parties. *See, e.g., Wilson v. State,* 145 Ga. App. 315, 244 S.E.2d 355 (1978). The administrative law judge found as a matter of fact that Respondent elected to receive workers' compensation benefits under Tennessee law and was paid compensation under Tennessee law from October 21, 1978 through October 12, 1979. This finding was adopted by the Full Board of Workers' Compensation of Georgia. Although Petitioner has appealed this award through the entire Georgia appellate court system, contending that this election bars Respondent from claiming Georgia workers' compensation benefits under the Full Faith and Credit and Due Process Clauses of the United States Constitution, Respondent has never filed any cross-appeal from this finding. Ga. Code Ann. (Harrison) § 6-803 (1975) [now codified at Official Code of Ga. Ann. § 5-6-38 (1982)] provides that an appellee may institute cross-appeal by filing notice thereof within 15 days after service of the appellant's notice of appeal, presenting for

adjudication all errors or rulings adversely affecting him. This procedure is available in workers' compensation cases, and the failure to cross-appeal makes this finding final. *Linder v. Alterman Foods, Inc.*, 162 Ga. App. 786, 292 S.E.2d 900 (1982); *Miller & Co. v. Gibbs*, 161 Ga. 698, 132 S.E. 626 (1926).

The effect of finality of this finding under Georgia law is demonstrated by the case of *Georgia Casualty & Surety Co. v. Randall*, 162 Ga. App. 532, 292 S.E.2d 118 (1982). In that case an insurance company had filed an action in a Georgia superior court to recover workers' compensation benefits paid during a time in which the claimant was not entitled to benefits. Claimant had been paid compensation for a period of time and the insurer had subsequently requested a hearing before an administrative law judge contending that claimant's condition had changed for the better since he had received a salary from the employer during the time he had been paid benefits. The administrative law judge determined that claimant had been overpaid compensation benefits and found that the insurer was authorized to cease compensation payments. The matter of repaying the insurer for the overpayments, provision for which is made under Official Code of Ga. Ann. § 34-9-243 (1982) [formerly Ga. Code Ann. (Harrison) § 114-415 (1973)], was not addressed in the award and no appeal was taken. The Georgia Court of Appeals held that the superior court action was barred by the doctrine of *res judicata* since the administrative law judge had not ordered repayment and the insurer did not appeal the award. Since the issue of repayment could have been litigated before the administrative law judge, *res judicata* barred any subsequent attempt to litigate this issue in light of the finality of the original award.

It is therefore evident that for the purposes of this case

the Tennessee proceedings and Respondent's election to proceed solely under Tennessee law in his workers' compensation claim are *res judicata* and final. This finality and the binding effect of Respondent's receipt of workers' compensation benefits under Tennessee law have been conceded by Respondent in this case and have been assumed in all administrative and judicial decisions in Georgia in this case. All elements of the Tennessee proceedings are final for purposes of the Full Faith and Credit Clause, and the relevant inquiry becomes whether, in light of the "irrevocable election doctrine" of Tennessee, Respondent's Georgia workers' compensation claim is barred.

II.

PETITIONER IS ENTITLED TO HAVE THE TENNESSEE PROCEEDINGS GIVEN FULL FAITH AND CREDIT IN GEORGIA

A. The Tennessee proceedings are entitled to Full Faith and Credit in Georgia.

As herein stated, the Tennessee proceedings have been treated by the parties and found in the Georgia Award to be final and *res judicata* of the rights of the parties under Tennessee law. It is the effect of the Tennessee payment and acceptance of benefits that is at dispute. As the Georgia Court of Appeals stated:

> Is this Tennessee decision entitled to full faith and credit in Georgia so as to bar recovery under this state's Workers' Compensation Act? We are not persuaded that the relevant case law, applying the Full Faith and Credit Clause, requires such a result. In our view, the more reasonable interpretation is that the Georgia Board is not precluded from applying the Georgia Workers' Compensation Act when jurisdiction has been

> properly invoked thereunder, notwithstanding an award properly made in a sister state. The United States Supreme Court is in general agreement with this position . . .

Roadway Express, Inc. v. Warren, 163 Ga. App. 759, 762-763, 295 S.E.2d 743, 746-747 (1982).

Petitioner firmly disagrees that this Court should so hold in this case.

Before examining the relevant decisions of this Court, it is necessary to examine the decisions of the State of Tennessee, the state whose law the Georgia court eschews. In *Tidwell v. Chattanooga Boiler & Tank Co.*, 163 Tenn. 420, 43 S.W.2d 221 (1931), the widow of an employee injured in an on-the-job accident sought benefits in Tennessee. The employer's principal office was in Tennessee, the employee was hired in Tennessee, and the employee met his death in an accident while on what was apparently a single job in the State of Ohio. The widow had begun proceedings in Ohio and had obtained an award and accepted benefits in Ohio before proceeding in Tennessee. The employer, while contesting the Ohio court's jurisdiction, refused to satisfy the Ohio award after its entry. Under a provision of Ohio law, the State of Ohio thereafter made payments to the widow. The Supreme Court of Tennessee recognized that the widow could have brought a compensation claim in Tennessee but noted that the Tennessee Act provided that its ". . . rights and remedies . . . shall exclude all other rights and remedies . . . at common law or otherwise, on account of such injury or death." *Id.* at 423-424, 43 S.W.2d at 223. The court reasoned that the employment contract incorporated this section by reference and applied it to the accident in Ohio. "Accordingly, when petitioner instituted the

proceedings in Ohio to recover compensation for her husband's death, this was a clear renunciation or disaffirmance of the contract. The obligations of the contract cannot be repudiated in one suit and benefits of that contract be claimed in a subsequent suit [citations omitted] . . . There can be no question but that the election thus made was irrevocable because petitioner has taken the benefit of the Ohio suit and defendant will doubtless take the detriment of that suit." *Id.*[7]

While it could perhaps be argued that *Tidwell* addresses itself to the converse situation of that presented in this case, it is self-apparent that the Tennessee courts would not have occasion to consider the effect of the election of Tennessee benefits in the first instance followed by an effort to seek a supplemental award from another state. However, in the case of *True v. Amerail Corp.*, 584 S.W.2d 794 (Tenn. 1979), the Supreme Court of Tennessee had occasion to give an even more clear expression of Tennessee law on this subject. In that case, the employee resided in Tennessee and the employer had offices and made its contract of employment within Tennessee. However, the employee was injured in Virginia.

[7]In a subsequent case, *Ohio v. Chattanooga Boiler & Tank Co.*, 289 U.S. 439, 53 S.Ct. 663 (1933), this Court, whose original jurisdiction was invoked by the State of Ohio, considered the further effect of the widow's election. The employer in that case sought to invoke the Full Faith and Credit Clause under the decision of *Bradford Electric Light Co. v. Clapper*, 286 U.S. 145, 52 S.Ct. 571 (1932), which is more fully discussed, *infra*, (Part II (B), p. 28). This Court declined to allow the employer to plead the exclusiveness of the Tennessee Workmen's Compensation Act remedy in Tennessee *on the facts there presented*. This Court noted that the Supreme Court of Tennessee in *Tidwell* had held that the widow renounced her rights under Tennessee law by virtue of the Ohio proceedings, and that the Ohio proceedings thus bound the employer and the widow. For that reason, this Court did not go on to compare the Tennessee statute with the statute of Vermont relied upon in *Clapper*.

After seeking and receiving benefits under an agreement for payment of compensation under Virginia law, the employee thereafter sought benefits under Tennessee law. Recognizing that Tennessee law had extra-territorial application for injuries occurring outside the state, where the employment was localized within the state or the contract for hire was made within the state, Tenn. Code Ann. (Bobbs-Merrill) § 50-917 (1977) [now codified at Tenn. Code Ann. § 50-6-115 (1983)], the court discussed *Tidwell* and the principle of Tennessee law of irrevocable election.[8] In language critical to an understanding of Tennessee law, the court stated:

> Counsel for the appellant earnestly and ably has sought to persuade the Court that it should recede from *Tidwell.* We are cited to 4 *Larson, Workmen's Compensation Law,* § 85.00 and to *Restatement (Second)* of *Conflict of Laws* § 182 (1969). On the basis of these authorities we are implored to hold that successive awards may be made in different states, deducting the amount of the first award from the second. Courts of last resort in various sister states have adopted this approach.
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> These authorities are appealing; however, we are not persuaded to sanction a course of conduct that would result in *what is essentially a single cause of action being made the subject of lawsuits in two states,* absent compelling considerations such as those enumerated in *Thomas,*

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[8]The court distinguished *Thomas v. Transport Ins. Co.,* 532 S.W.2d 263 (Tenn. 1976), which involved simple acceptance of checks under Arkansas law with no information as to the nature of the benefits being received. The instant case is equally distinguishable on its facts herein cited and the finding of irrevocable election of the Georgia Award, from which no appeal was taken.

> *supra*. We are persuaded that the *Tidwell* rule represents a fair approach in those cases wherein the injured workman has made a binding election as indicated by affirmatively seeking and accepting benefits in another state. (emphasis added)

True, 584 S.W.2d at 797-798.[9]

In *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 64 S.Ct. 208 (1943), this Court held that the Louisiana Court of Appeals erred in declining to give Full Faith and Credit under U.S. Const. art. IV, § 1 to an award in Texas adjudicating the employee's claim for compensation for an injury suffered there, and in granting a supplemental award of compensation in Louisiana. As Mr. Chief Justice Stone noted: '". . . [W]hen the employee who has recovered compensation for his injury in one state seeks a second recovery in another he may be met by the plea that full faith and credit requires that his demand, which has become *res judicata* in one state, must be recognized as such in every other . . ." *Id.* at 437, 64 S.Ct. at 213. While recognizing certain very limited exceptions to the application of the Full Faith and Credit Clause, this Court found

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[9]A potentially confusing note is injected by the last paragraph of the opinion which holds that the Full Faith and Credit Clause does not preclude the Tennessee suit, citing *Industrial Commission of Wisconsin v. McCartin*, 330 U.S. 622, 67 S.Ct. 886 (1947). In this regard, it should be remembered that it was the *Virginia* award as to which the employer in *True* was seeking Full Faith and Credit, not an award of Tennessee. Virginia has been determined to be among those states which do not have the "unmistakable language" necessary under *McCartin* which would warrant a construction designed to preclude any recovery by a proceeding brought in another state. *Id.* at 627-628, 67 S.Ct. at 889. *Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 100 S.Ct. 2647 (1980). Hence, the Court in *True* was giving the same construction to the Virginia statute and decisions given by this Court in *Thomas* and properly felt that the precedent of *McCartin* did not call for imposition of the Full Faith and Credit Clause as a bar.

no such exception in the area of workmen's compensation laws. *Id.* at 438, 64 S.Ct. at 213.

> . . . The full faith and credit clause like the commerce clause thus became a nationally unifying force. It altered the status of the several states as independent foreign sovereignties, each free to ignore rights and obligations created under the laws or established by the judicial proceedings of the others, by making each an integral part of a single nation, in which rights judicially established in any part are given nation-wide application. [citation omitted] . . .

Id. at 439, 64 S.Ct. at 214. The fact that Louisiana had a recognized interest in awarding compensation to Louisiana employees did not override this policy.[10]

It is noteworthy that this Court in *Magnolia* did not concern itself with whether the Texas award was a "judicial proceeding" or a "record" of Texas within the meaning of the Full Faith and Credit Clause. Both are required to be given Full Faith and Credit. *Id.* at 443, 64 S.Ct. at 215. This Court thus gave credit to substance over form. In the present case, as discussed, *supra,* pp. 11-13, the parties have agreed, or the Georgia Award found, that degree of finality requisite for *res judicata.* The Georgia

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[10]In the area of interest analysis, which will be more fully discussed, *infra,* p. 25, it is worthwhile to note that Hunt was a Louisiana resident, hired in Louisiana, whose sole contact with Texas was injury there. In the present case, Warren's sole contact with the State of Georgia was being hired in Georgia some fifteen years before the accident. He subsequently voluntarily transferred to Tennessee seven years before the accident and did not enter the State of Georgia under his employment arrangement for business purposes for at least six years preceding the accident. He was a resident of Tennessee and was injured in Indiana while driving from Nashville, Tennessee to Chicago, Illinois.

Court of Appeals did not allow a collateral attack on the Tennessee proceedings as not being *res judicata* of the parties' rights under Tennessee law. The Georgia court simply chose to ignore the Tennessee proceedings other than as a credit to the Georgia supplemental award.

This Court reexamined the present issue in *Industrial Commission of Wisconsin v. McCartin*, 330 U.S. 622, 67 S.Ct. 886 (1947), a decision which has been subsequently criticized by this Court[11] but which is nevertheless worthy of examination under the facts here presented. Both the employer and employee in *McCartin* resided in Illinois and the contract of employment was made there but the employee was injured in Wisconsin. He filed claims in both states and received a settlement and award under Illinois law which included a provision that the settlement did not affect his rights under Wisconsin law. When he thereafter sought compensation in Wisconsin, the employer relied upon *Magnolia*. While this Court might have chosen to rest its decision solely upon the language in the Illinois award which would have allowed the proceedings in Wisconsin, the Court instead chose to rest its decision not only on that saving exception in the Illinois award but also on an interpretation of Illinois law and its exclusivity in the workers' compensation area, which was found to only limit the right of action against the employer to bar common law or personal injury suits. This Court noted that ". . . there is nothing in the statute or in the decisions thereunder to indicate that it is completely exclusive, that it is designed to preclude any recovery by proceedings brought in another state for injuries received there in the course of an Illinois employment. *Cf. Bradford Electric Light Co. v. Clapper* [remaining citation

[11] *See Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 100 S.Ct. 2647 (1980).

omitted] . . ." *Id.* at 627-628, 67 S.Ct. at 889. The Court went on to note: ". . . [W]e should not readily interpret such a statute so as to cut off an employee's right to sue under other legislation passed for his benefit. Only some unmistakable language by a state legislature or judiciary would warrant our accepting such a construction . . ." *Id.* at 628, 67 S.Ct. at 889.

That was the state of the law, in overview, at the time of this accident. Subsequent to this accident and the institution of proceedings in Georgia, this Court has rendered its decision in *Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 100 S.Ct. 2647 (1980). In that case, the employee resided in the District of Columbia, his employer was principally located within the District and hired the employee there. However, the employee was injured in Virginia. He applied for and received benefits under the Virginia Workmen's Compensation Act. Thereafter, the employee sought a supplemental award in the District of Columbia. While Virginia's "exclusivity" statute is similar to that of Tennessee, there were evidently no cases in Virginia giving interpretation to the effect of this statute like those of *Tidwell* and *True*.[12] A plurality of this Court reasoned that *McCartin* has so eroded *Magnolia* that the principle of *stare decisis* would not be significantly violated by reexamining those cases. The plurality examined different state interests affected by the conflict between Virginia and the District of Columbia. These interests were characterized as follows:

> . . . Virginia has a valid interest in placing a limit on the potential liability of companies that transact business within its borders. Both jurisdic-

[12] *Thomas*, 448 U.S. at 265, n.4, and at 269, 100 S.Ct. at 2652, n. 4, and at 2654-2655.

> tions have a valid interest in the welfare of the injured employee – Virginia because the injury occured within that State, and the District because the injured party was employed and resided there. And finally, Virginia has an interest in having the integrity of its formal determinations of contested issues respected by other sovereigns.

Id. at 277, 100 S.Ct. at 2659.[13] Relying on two earlier cases, *Alaska Packers Ass'n v. Industrial Accident Commission*, 294 U.S. 532, 55 S.Ct. 518 (1935) and *Pacific Employers Insurance Co. v. Industrial Accident Commission*, 306 U.S. 493, 59 S.Ct. 629 (1939), as well as more recent cases,[14] the plurality reasoned that the principle of the Full Faith and Credit Clause does not require a state to subordinate its own compensation policies to those of another state.[15] The plurality went on to state that they "would hold" that one state has no legitimate interest in preventing another from granting a supplemental compensation award when the second state would have had the power to apply its laws in the first instance. *Id.* at 286, 100 S.Ct. at 2663.

Three members of this Court, concurring in the judgment based upon their interpretation of the Virginia statute as lacking the "unmistakable language" required by

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[13]It is noteworthy that no such interest of Georgia could be asserted in this case. Respondent was neither employed nor did he reside in Georgia at the time of his accident.

[14]*Nevada v. Hall*, 440 U.S. 410, 99 S.Ct. 1182 (1979); *Crider v. Zurich Insurance Co.*, 380 U.S. 39, 85 S.Ct. 769 (1965); *Carroll v. Lanza*, 349 U.S. 408, 75 S.Ct. 804 (1955).

[15]Each of the cases relied on were cases which involved holdings that the *statutes* of another state were not, under the facts, entitled to Full Faith and Credit. In this regard, see discussion of giving Full Faith and Credit to the Tennessee statute, *infra*, p. 28.

McCartin, disagreed with the plurality. In essence, the concurring members of this Court would affirm both *McCartin* and *Magnolia,* though expressing the view that *Magnolia* states the sounder doctrine. Mr. Justice White, writing the concurring opinion, states: ". . . It seems to me grossly unfair that the plaintiff, having the initial choice of forum, should be given the additional advantage of a second adjudication should his choice prove disappointing . . ." *Id.* at 289, 100 S.Ct. at 2664-2665. Finally, Mr. Justice Rehnquist, one of two dissenting Justices, noted that six members of this Court agreed that *McCartin* was analytically indefensible while the remaining three Members of the Court conceded that it " 'rest[s] on questionable foundations.' " *Id.* at 290, 100 S.Ct. at 2665. The dissenting Justices would overrule *McCartin* and affirm the application of *Magnolia* to the facts. Mr. Justice Rehnquist, in this opinion, noted that ". . . [w]hile workmen's compensation awards may be 'non-final' in the sense that they are subject to continuing supervision and modification, Virginia nevertheless has a cognizable interest in requiring persons who avail themselves of its statutory remedy to eschew other alternative remedies that might be available to them . . ." *Id.* at 293, 100 S.Ct. at 2667.

Under either *Magnolia* or *McCartin,* Petitioner is entitled to have the Tennessee proceedings accorded Full Faith and Credit in Georgia. All of the essential elements of *res judicata* or finality have been found present. And, unlike the Illinois statute, as interpreted by the Illinois courts in *McCartin,* Tennessee has in "unmistakable language" indicated its desire for exclusivity. One year before this Court's decision in *Thomas,* the Supreme Court of Tennessee in *True* rejected, for Tennessee, the very reasoning of some writers on the desirability of allowing successive

awards in two or more states.[16] The *True* court, in stating that there exists a *single* cause of action, which cannot be made the subject of lawsuits in two states, is rejecting, in the most forceful terms, the actions taken by the Georgia tribunals in this case. Thus, whether viewed under the rationale of *Magnolia* alone, or the combined rationale of *Magnolia* and *McCartin*, Georgia must give Full Faith and Credit to the Tennessee proceedings.

The Georgia Court of Appeals has itself recognized that *Alaska Packers, Pacific Employers,* and even *Thomas* are factually distinguishable from the case at bar. *Roadway Express, Inc. v. Warren,* 163 Ga. App. at 764, 295 S.E.2d at 747. The instant case presents one of the strongest cases, on its facts, ever before this Court on this issue. If an interest-weighing approach is used, as delineated by Justice Frankfurter in his dissent in *Carroll v. Lanza,* 349 U.S. at 419, 75 S.Ct. at 810, all of the ten interests he enumerates for workmen's compensation cases are on the side of Tennessee or some state other than Georgia except the highly contested issue of where the employment contract was made.[17] But interest analysis alone is insufficient

[16]Compare *Thomas,* 448 U.S. at 274, n.19, 100 S.Ct. at 2657, n.19, citing Professor Larson, with *True,* 584 S.W.2d at 797-798, wherein Professor Larson's reasoning was expressly rejected by Tennessee.

[17]"The relevant considerations have been: the place of the employment contract [Petitioner herein contended for Tennessee, Respondent for Georgia and the Georgia Court of Appeals upheld on the 'any evidence' test the Georgia Award finding of Georgia]; the residence of the parties [Respondent resided in Tennessee and afterwards moved to Florida while Petitioner's 'residence' is not established other than that it has a terminal in Nashville, Tennessee]; the place of injury [Indiana in this case]; the possibility of the workman becoming a public charge in the State seeking to award compensation, *see Alaska Packers* [not possible in this case – see argument *infra,* p. 35]; the interest of a State in securing prompt payment of medical fees to its residents [none of the medical suppliers in this case are Georgia residents]; the aspect of exclusivity of the foreign statute, *see McCartin* ["unmistakable

answer to the teaching of *Magnolia*. *Magnolia* finds that Full Faith and Credit is paramount over conflicting significant interests of the state. Even assuming, *arguendo*, that Georgia has some remote interest in Respondent, fifteen years after he entered an employment agreement with Petitioner in Georgia, seven years after he moved his residence from Georgia and six years after he ceased entering Georgia for business purposes, the Full Faith and Credit Clause still requires that Georgia yield to Tennessee under these circumstances.

To allow Georgia to do otherwise is to encourage even more those parochial instincts which have been asserted by the states in this area. If each state is free to follow, or even to ignore,[18] its rules of conflicts of law and to ignore the administrative and judicial proceedings of sister states having vastly greater interest in the subject matter, the whole purpose of the Full Faith and Credit Clause will be soon lost.

Moreover, a decision to affirm the Georgia court in this

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language" of Tennessee decisions]; the State's interest in the bodily safety and economic protection of workers within it [Warren was not working within Georgia]; the difference between a defense (which if rejected results in irremediable liability) and a cause of action (which if not allowed in one State can be pursued in another), *see Clapper* [Respondent has a remedy in Tennessee]; the amount of work to be performed in a State, *see Cardillo* [none in Georgia for six years preceding the injury date]; and the policy of determinate liability and prompt remedy underlying workmen's compensation acts [Petitioner and Respondent entered into an agreement for payment of compensation in Tennessee within two weeks of date of accident]."

[18]"Georgia's conflicts rules dictated a contrary result to that of this case. *See Wardell v. Richmond Screw Anchor Co.*, 133 Ga. App. 378, 210 S.E.2d 854 (1974); *Allen v. Smith & Medford, Inc.*, 129 Ga. App. 538, 199 S.E.2d 876 (1974); *Eldon Industries, Inc. v. Paradies & Co.*, 397 F.Supp. 535 (N.D. Ga. 1975); *Peretzman v. Borochoff*, 58 Ga. App. 838, 200 S.E. 331 (1938).

case will encourage forum-shopping. Respondent was obviously quite content to receive benefits under Tennessee law as long as Petitioner was content to pay them. But when, on the basis of a new doctor's opinion one year after the accident, Petitioner contended that Respondent was no longer disabled, Respondent, within days, sought to use the Georgia forum to his advantage. The Georgia advantages are, in fact, numerous. Aside from the additional $10.00 per week allowed in Georgia over the Tennessee benefits,[19] Georgia also provides for lifetime disability benefits as opposed to Tennessee's maximum of 400 weeks.[20] Moreover, Tennessee allows subrogation against a recovery from a third party tortfeasor, whereas Georgia has no such provision.[21] These significant differences in the law of Georgia and the law of Tennessee bespeak the reasons for Respondent's forum-shopping.

The tenuousness of Georgia's interest in this case, the weightiness of Tennessee's interest, the clarity of Tennessee's policy, and the principles of law in this Court's decisions in *Magnolia* and *McCartin* all dictate application

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[19]Compare Ga. Code Ann. (Harrison) § 114-404 (1973) [now codified at Official Code of Ga. Ann. § 34-9-261 (1982)], providing benefits in 1978 of $110.00 per week (Georgia Laws 1978, pp. 2220, 2222) to Tennessee Code Ann. (Bobbs-Merrill) § 50-1007 (1977) [now codified at Tenn. Code Ann. § 50-6-207 (1983)], which in 1978 provided benefits of $100.00 per week.

[20]Compare Ga. Code Ann. (Harrison) § 114-404 (1973) [now codified at Official Code of Ga. Ann. § 34-9-261 (1982)] to Tenn. Code Ann. (Bobbs-Merrill) § 50-1005 (1977) [now codified at Tenn. Code Ann. § 50-6-115 (1983)].

[21]Compare Tennessee Code Ann. (Bobbs-Merrill) § 50-914 (1977) [now codified at Tenn. Code Ann. § 50-6-112 (1983)] to former Ga. Code Ann. § 114-403 (repealed by Georgia Laws 1972, p.3). Because of the Indiana litigation, and Petitioner's subrogation rights established therein, substantial monies are at issue on this point. See SB-8a (lien against future benefits due under Tennessee law).

of Full Faith and Credit to the Tennessee proceedings herein.

B. Georgia is required to give Full Faith and Credit to the Tennessee statute.

Petitioner has asserted, and maintains, that the Tennessee proceedings have the requisite finality for *res judicata* treatment by this Court. However, Petitioner further asserts that the Tennessee statute, as interpreted by the courts of that state, is itself entitled to Full Faith and Credit in Georgia. Tenn. Code Ann. (Bobbs-Merrill) § 50-908 (1977) [now codified at Tenn. Code Ann. § 50-6-108 (1983)] provides that: "The rights and remedies herein granted to an employee subject to the Workmen's Compensation Law . . . shall exclude all other rights and remedies of such employee . . . at common law or otherwise, on account of such injury . . ." As interpreted by *True* and *Tidwell,* when a worker takes action to elect benefits based upon his "single cause of action", he cannot thereafter maintain a second action.

This statute, as interpreted by the highest court of the State of Tennessee, is not unique among the states.[22] In this Court's original confrontation with this issue, in *Bradford Electric Light Co. v. Clapper,* 286 U.S. 145, 52 S.Ct. 571 (1932), the Court considered a Vermont resident employed by a Vermont employer who was killed in New Hampshire while temporarily there. His representative thereafter sought to proceed under New Hampshire law which permitted a negligence action. Vermont law barred the action. This Court held that the Vermont law, though conflicting with the law of New Hampshire, was entitled

[22] *See Thomas,* 448 U.S. at 275, n. 21, 100 S.Ct. at 2657, n. 21 (Nevada statute).

to Full Faith and Credit under U.S. Const. art. IV, § 1, because the Vermont statute is a "public act" within the meaning of the Full Faith and Credit Clause. This Court used the same rationale used in *Tidwell* and followed in *True*. "Workmen's compensation acts are treated, almost universally, as creating a statutory relation between the parties – not, like employer's liability acts, as substituting a statutory tort for a common-law tort. [citations omitted]" *Clapper*, 286 U.S. at 157-158, 52 S.Ct. at 575. Noting that the Vermont statute was intended to give expeditious relief independent of proof of fault and also determinate liability, this Court found that its effectiveness would be gravely impaired by New Hampshire's failure to give Full Faith and Credit. *Id.* at 159, 52 S.Ct. at 575-576. While recognizing that the Full Faith and Credit Clause does not require enforcement of every right conferred by a statute of another state, and noting ". . . room for some play of conflicting policies . . .", this Court found no basis for the lower court's conclusion that to deny recovery would be obnoxious to the public policy of New Hampshire. *Id.* at 160-161, 52 S.Ct. at 576. As noted by Mr. Justice Brandeis:

> The interest of New Hampshire was only casual. Leon Clapper was not a resident there. He was not continuously employed there. So far as appears, he had no dependent there. It is difficult to see how the state's interest would be subserved, under such circumstances, by burdening its courts with this litigation.

Id. at 162, 52 S.Ct. at 577.

In *Alaska Packers Association v. Industrial Accident Commission*, 294 U.S. 532, 55 S.Ct. 518 (1935), this Court was presented with a somewhat different situation. There, a non-resident alien entered into a contract of employment

in California to work in Alaska during the salmon canning season. After his return from Alaska to California, he sought workmen's compensation benefits in California for a summer injury sustained in Alaska. The employer asserted the exclusivity of the Alaska statute. This Court, noting that the California statute does not purport to have any extraterritorial effect, "in the sense that it undertakes to impose a rule for foreign tribunals . . .", distinguished *Clapper. Id.* at 540, 55 S.Ct. at 520. Fearing that denial of a remedy in California would leave the employee remediless, the Court found a legitimate public interest in California. In analyzing the Full Faith and Credit problem, the Court properly noted that: ". . . A rigid and literal enforcement of the full faith and credit clause, without regard to the statute of the forum, would lead to the absurd result that, wherever the conflict arises, the statute of each state must be enforced by the courts of the other, but cannot be in its own . . ." *Id.* at 547, 55 S.Ct. at 523. (Of course, the corollary question presented in the instant case might be stated somewhat differently: Whether or not, when a conflict arises in a workers' compensation case, the statute of a sister state may ever be required to be enforced in the forum state under the Full Faith and Credit Clause?) The *Alaska Packers* court went on to note that:

> . . . [N]ot every statute of another state will override a conflicting statute of the forum by virtue of the full faith and credit clause; that the statute of a state may sometimes override the conflicting statute of another, both at home and abroad; and, again that the two conflicting statutes may each prevail over the other at home, although given no extraterritorial effect in the state of the other . . .

Id. at 548, 55 S.Ct. at 524. The Court said that that rationale was fully recognized in *Clapper* in the appraisal of the governmental interests of the two states, Vermont and New Hampshire. The Court simply questioned the existence of a rational basis for denying the courts of California the right to apply the laws of their own state under the facts.

Alaska Packers is readily distinguishable from the instant case. It is obvious that the work which the employee in *Alaska Packers* was to perform in Alaska was the exact work which the parties contracted for in California and contemplated would be done that summer. In the present case, while the facts were hotly disputed, the most that can be said is that there was "some evidence" to support the notion that the employment contract was entered into in Georgia in 1963.[23] However, the *job* which Respondent was performing pursuant to his contract of employment was clearly unrelated to Georgia and had been for many years. His work did not require him to enter Georgia or to reside in Georgia, and he did not do so. In fact, he evidenced no interest in Georgia whatsoever until nearly one year after his accident, long after he had engaged counsel, and then only because Petitioner disputed his right to *continued* benefits in Tennessee after paying him disability payments for nearly one year. Unlike the nonresident alien from Mexico in *Alaska Packers,* Respondent here not only had the resources to file a claim in Tennessee, he did so. His claim was honored and accepted. It is, in fact, the acceptance of his claim in Tennessee that

[23] *Roadway Express, Inc. v. Warren*, 163 Ga. App. at 760-761, 295 S.E.2d at 745 (1982) ("Our review of the record convinces us that the contentions of both parties have merit. There is evidence supporting both positions.")

gives rise to the conflict. Had he chosen to apply first in Georgia, Tennessee would have held that he had disaffirmed his right to Tennessee benefits and elected to accept Georgia benefits. *Tidwell, True.* If, as this Court was suggesting in *Alaska Packers,* a flexible approach is required, and Full Faith and Credit is *sometimes* to be allowed to the statute of a sister state when a conflict arises, no more compelling facts could be presented than in this case.

The plurality in *Thomas* suggested that: ". . . [F]or all practical purposes respondent and its insurer would have had to measure their potential liability exposure by the more generous of the two workmen's compensation schemes in any event . . ." *Thomas,* 448 U.S. at 280, 100 S.Ct. at 2660. But by what reasonable interpretation could Petitioner have predicted the result here reached? In today's mobile society, employees move frequently. Over a period of 20 or 30 years, an employee's duties may change. The lower court here suggested that there was evidence to support a theory of novation of the contract when Respondent moved to Tennessee because of his change of duties.[24] If this is so, the Georgia Board (or the Tennessee court, for that matter) could have found a "new" contract in Tennessee in 1971. If *Alaska Packers* is slavishly interpreted to mean that any state having an old employment contract (or novation of contract) has a sufficient interest to overcome all other states, then no employer can predict its liability. Must the employer, in assessing its exposure, consider not only the laws of the state where the employee was originally hired, and the state where he is working when injured, and the state of injury, but also every state to which the employee is transferred during a long career? Is not some greater nexus required than that Petitioner

[24] *Roadway Express, Inc. v. Warren,* 163 Ga. App. at 760-761, 295 S.E.2d at 745 (1982).

hired Respondent in Georgia for different duties, in a different location, residing in a different place, working at different wages, and at a time fifteen years distant from the date of the accident? What is Georgia's interest under these circumstances? Is not the "obnoxiousness" the tenuous *Georgia* interest?

The later cases decided by this Court all involve quite distinguishable facts. *Pacific Employers Insurance Co. v. Industrial Accident Comm'n,* 306 U.S. 493, 59 S.Ct. 629 (1939), again involving California, concerned an employee who was injured in California and received medical and hospital attention there. Focusing on the obligation placed on the employer by the California statute to furnish such care, this Court declined to apply the Full Faith and Credit Clause to a Massachusetts statute because the injury occurred within the territorial limits of California. Recognizing California's interest in allowing compensation for employees injured within its borders, and recognizing that *Clapper* provided for an exception when the forum state found provisions of the other state's statute obnoxious, this Court permitted California to eschew the Massachusetts exclusivity rule and apply its own law. It is noteworthy, however, that this Court reaffirmed the right of *this Court* to determine for itself how far the Full Faith and Credit Clause compels the qualification or denial of rights asserted under the laws of one state, that of the forum, by the statute of another state. *Pacific Employers,* 306 U.S. at 502, 59 S.Ct. at 633. In other words, Georgia is not the final arbiter of whether or not its laws can properly supplant those of Tennessee. This Court is the final arbiter of that subject.

In *Carroll v. Lanza,* 349 U.S. 408, 75 S.Ct. 804 (1955), the employee and employer were residents of Missouri, the contract was made in Missouri for work to be done in

Arkansas, and it was there that the injury occurred. The employee accepted benefits under the Missouri Compensation Act and then sued the general contractor in Arkansas for common law damages. This Court noted that *Magnolia* was to be distinguished because, under Missouri law, the payments had started automatically and there had been no adjudication. Relying on *Pacific Employers'* teaching that the place of the injury can override the compensation act of the home state, and based upon policy considerations such as those raised in *Pacific Employers* (problems of medical care and of possible dependency), this Court allowed the common law suit in Arkansas.

In *Crider v. Zurich Ins. Co.*, 380 U.S. 39, 85 S.Ct. 769 (1965), the employee was a resident of Alabama and employed in Alabama by a Georgia company. He was injured in Alabama, and thereupon sought to enforce the Georgia Workmen's Compensation Act in Alabama. The lower court dismissed the action based upon its determination that Georgia's Act was one which was to be exclusively administered by the Georgia Compensation Board. *Id.* at 40, 85 S.Ct. at 769. In analyzing *Clapper, Alaska Packers* and *Pacific Employers,* this Court in *Crider* indicates that certain interest factors allow a variance from the strict enforcement of the Full Faith and Credit Clause to the statute of one state in the forum of another. This Court notes the *Alaska Packers* exception as being the *state of residence* of the injured employee (evidently the *Alaska Packers* employee, though a non-resident alien, was deemed to be residing in California). The state of injury under *Pacific Employers* was another recognized state interest. Yet, in all of the interest analysis, no interest comparable to the rather meager one asserted here is stated by the *Crider* Court to be sufficient to overcome the Full Faith and Credit Clause.

Finally, in *Nevada v. Hall,* 440 U.S. 410, 99 S.Ct. 1182 (1979), this Court once more considered the line of authority beginning with *Clapper.* In a tort action involving California residents injured in California by a vehicle operated by an employee of the State of Nevada, which, by statute, limited to $25,000.00 any tort award against it, the California courts nonetheless upheld an award of $1,150,000.00. Against this, the State of Nevada asserted the Full Faith and Credit Clause, among other contentions. In reviewing the decisional law, this Court again recognized that in certain limited situations, the courts of one state must apply the statutory law of another state, citing *Clapper. Id.* at 421-422, 99 S.Ct. at 1188-1189. It is only when the *legitimate* public policy of one state is violated by applying the other state's law that the Full Faith and Credit Clause is not required to be applied. The same interests which authorized California in the *Pacific Employers* case to provide for "the bodily safety and economic protection of employees injured within it," also allowed protection of those interests in *Nevada v. Hall,* a tort action. *Id.* at 424, 99 S.Ct. at 1190.

It has been suggested that these later cases "buried whatever was left of *Clapper* after *Pacific Employers Ins. Co. v. Industrial Accident Comm'n . . .*" *Thomas,* 448 U.S. at 272, n. 18, 100 S.Ct. at 2656, n. 18. Petitioner agrees that where a significant *present* interest is vested in the forum state, this may be true. But no public policy interest can be articulated which would give Georgia contact with this accident. Georgia will not be left to provide for this employee.[25] In fact, medical or hospital services for

[25]As a non-resident of Georgia before and after the accident, he would be ineligible for State funded unemployment benefits, "welfare" benefits or free medical care. *See* Official Code of Ga. Ann. §§ 34-8-1 and 40 (1982) [formerly Ga. Code Ann. (Harrison)

Respondent were provided in Indiana and Tennessee. Nor are any of the other contacts described by Justice Frankfurter in his dissent in *Carroll v. Lanza*, 349 U.S. at 419, 75 S.Ct. at 810, applicable. After Respondent voluntarily left Georgia in 1971, that state had no interest in his employment relationship with Petitioner. Tennessee's overwhelming state interests have already been delineated. Accordingly, exercising the authority of final arbiter of the Full Faith and Credit Clause, this Court should find that Georgia must give Full Faith and Credit to the Tennessee statute under the facts of this case.

III.

THE GEORGIA AWARD DENIES PETITIONER DUE PROCESS.

Respondent respectfully submits that under the facts of this case, Georgia's exercise of jurisdiction over this workers' compensation claim violates the Due Process Clause of the United States Constitution (U.S. Const. amend. XIV, § 1). The application of due process to a choice of law question has recently been enunciated by this Court in the decision of *Allstate Insurance Co. v. Hague*, 449 U.S. 302, 101 S.Ct. 633 (1981), as follows: "[F]or a State's substantive law to be selected in a constitutionally permissible manner, that State must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its laws is neither arbitrary nor fundamentally unfair." *Id.* at 312-13, 101 S.Ct. at 640. The *Hague* decision and prior decisions of this

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§§ 54-601 and 657 (1974)]; Official Code of Ga. Ann. §§ 49-4-3, 4, 80, 81, 100 and 140 (1982) [formely Ga. Code Ann. (Harrison) §§ 99-2903, 2904, 2001, 2002, 901 and 4601 (1981)]; and Official Code of Ga. Ann. §§ 49-9-1 and 9 [formerly Ga. Code Ann. (Harrison) §§ 32-2302 and 2309 (1980)].

Court indicate that Georgia's lack of interest in this case precludes Georgia from constitutionally exercising jurisdiction over this workers' compensation claim under Ga. Code Ann. (Harrison) § 114-411 (1973) [now codified at Official Code of Ga. Ann. § 34-9-242 (1982)].

This Court considered whether the exercise of jurisdiction in a workers' compensation proceeding violated due process in *Alaska Packers.* The Court was convinced that, under the circumstances of that case, fully discussed, *supra,* pp. 29-32, due process was not violated by California's exercise of jurisdiction. The Court restricted its holding to the particular facts of the case, stating as follows:

> It is unnecessary to consider what effect should be given to the California statute if the parties were domiciled in Alaska or were their relationship to California such as to give it a lesser interest in protecting the employee by securing for him an adequate and readily available remedy.

294 U.S. at 543, 55 S.Ct. at 522.[26]

The decisions of *Home Insurance Co. v. Dick,* 281 U.S. 397, 50 S.Ct. 338 (1930) and *John Hancock Mutual Life Insurance Co. v. Yates,* 299 U.S. 178, 57 S.Ct. 129 (1936), whose continued validity were recognized by this Court in *Hague,* held that where the selection of forum law rests exclusively on one nonsignificant forum contact, application of its law is unconstitutional. In *Dick,* the only contact with the forum was that the plaintiff was a citizen of the

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[26]So far as Petitioner can ascertain, *Alaska Packers* is the last case decided by this Court in the area of workers' compensation which specifically considered a due process challenge.

forum state. Plaintiff was physically present and acting outside of the forum state and all other contacts were elsewhere than in the forum state. In *Yates*, the only contact with the forum state was the post-occurrence change of residence of the plaintiff to the forum state. The *Hague* Court found sufficient contacts for application of forum law in that case. The contacts were cited in the plurality opinion – plaintiff's decedent was employed and working daily in the forum state at the time of the occurrence in suit, defendant was at all times present and doing business in the forum state, and plaintiff was a resident of the forum state when suit was filed. These contacts are far more signficant than those in the instant case.

The only contact between the State of Georgia and the instant workers' compensation claim is the fact that fifteen years prior to the accident Petitioner and Respondent entered into a contract of employment in Georgia, under which Respondent worked for four years before his 1967 injury. Georgia has no other contact with this litigation. At all times pertinent to the accident involved in this case, Respondent was a resident of Tennessee. From the date of his reemployment with Petitioner in 1971, Respondent worked out of the Nashville, Tennessee terminal, and he had not even driven into Georgia for over six years prior to the accident. Respondent's accident occurred in Indiana while he was on his run to Chicago from Nashville, a run which he had exclusively driven for over two years prior to his accident. He initially chose to receive workers' compensation benefits under the laws of his state of residence, Tennessee, and admitted accepting benefits under the workers' compensation laws of Tennessee. He has not been transferred back to Georgia, nor has he moved to Georgia. He now lives in Florida. It has not even been established that Petitioner has a specific place of business

in Georgia.[27] In light of Respondent's reemployment by Petitioner in Tennessee in 1971 after a four-year lapse of work and the fact that he resided in Tennessee and operated out of that state after that date, the mere fact that he lived in Georgia and worked for Petitioner from 1963 until 1967 in Georgia does not constitute a sufficient contact with Georgia to allow application of the Georgia Workers' Compensation Act.

It is clear under the facts of this case that the application of Georgia law to allow Respondent a second award of workers' compensation benefits is fundamentally unfair, thus resulting in a denial of due process. The application of Georgia law unjustifiably infringes upon the legitimate interest of the State of Tennessee in having its workers' compensation laws be the exclusive remedy of parties who choose to come under its law. Under the circumstances of this case, Petitioner could not reasonably have anticipated that it would be subject to an award of workers' compensation benefits in Georgia. Georgia has absolutely no interest in Respondent and cannot constitutionally ignore the legitimate public policy of Tennessee as announced in the decisions setting forth Tennessee's "irrevocable election doctrine". The Georgia Court of Appeals has sought to apply Georgia public policy to a case in which it has no interest whatsoever. The Georgia Court of Appeals' choice of Georgia law in contravention of the clearly stated public policy of Tennessee was therefore unconstitutional.

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[27] The Georgia Award "inferred" that Petitioner had a place of business from its stipulation as a qualified self-insurer in Georgia (P-A-19a), a questionable conclusion in view of the absence of any Georgia requirement on a self-insurer that it have a place of business in the state. *See* Ga. Code Ann. (Harrison) §§ 114-602 and 604 (1973) [now codified at Official Code of Ga. Ann. §§ 34-9-121 and 14 (1982)].

Pursuant to the aforecited precedent from this Court, the Georgia Court of Appeals should have held that Tennessee law and not Georgia law governed Respondent's workers' compensation case. Under the Due Process Clause, Tennessee law and its "irrevocable election doctrine" bar Respondent's claim for benefits under Georgia law, requiring that the decision of the Georgia Court of Appeals be reversed.

CONCLUSION

Accordingly, the decision of the Court of Appeals of Georgia should be reversed because Georgia's exercise of jurisdiction over this workers' compensation claim in contravention of the "irrevocable election doctrine" of Tennessee law violated the Full Faith and Credit and Due Process Clauses of the U.S. Constitution.

Respectfully submitted,

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APPENDIX

STATUTORY PROVISIONS INVOLVED

Ga. Code Ann. (Harrison) § 6-803 (1975) [now codified at Official Code of Ga. Ann. § 5-6-38 (1982)]

(a) A notice of appeal shall be filed within 30 days after entry of the appealable decision or judgment complained of . . . In civil cases, the appellee may institute cross-appeal by filing notice thereof within 15 days from service of the notice of appeal by appellant, and the appellee may present for adjudication on the cross-appeal all errors or rulings adversely affecting him, and in no case shall the appellee be required to institute an independent appeal on his own right, although the appellee may at his option file an independent appeal. The notice of cross-appeal shall set forth the title and docket number of the case, the name of appellee and the name and address of his attorney, a designation of any portions of the record or transcript designated for omission by appellant and which the appellee desires included, and shall state that the appellee takes a cross-appeal. In all cases where the notice of appeal did not specify that a transcript of evidence and proceedings was to be transmitted as a part of the record on appeal, the notice of cross-appeal shall state whether such transcript is to be filed for inclusion in the record on appeal. A copy of the notice of cross-appeal shall be served on other parties of record in the manner hereinafter prescribed.

(b) Where cross-appeal is filed, only one record and, where specified, only one transcript of evidence and proceedings need be prepared and transmitted to the appellate court, but the cross-appellant may, at his election, require that such a separate record (and transcript, if required) be

transmitted. Where cross-appeal is filed and only one record (and transcript where required) is sent up, the court shall by order provide for the division of costs therefor between the parties, if they are unable to do so by agreement.

Ga. Code Ann. (Harrison) § 114-411 (1973) [now codified at Official Code of Ga. Ann. § 34-9-242 (1982)]

Where an accident happens while the employee is employed elsewhere than in this State, which would entitle him or his dependents to compensation if it had happened in this State, the employee or his dependents shall be entitled to compensation, if the contract of employment was made in this State, and if the employer's place of business is in this state or if the residence of the employee is in this State: Provided, his contract of employment was not expressly for service exclusively outside of the State: Provided, however, that if an employee shall receive compensation or damages under the laws of any other State, nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this Title.

Ga. Code Ann. (Harrison) § 114-404 (1973) [now codified at Official Code of Ga. Ann. § 34-9-261 (1982)]

While the disability to work resulting from an injury is total, the employer shall pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the employee's weekly wage, but not more than $110 per week nor less than $25 per week, except that when the weekly wage is below $25 the employer shall pay a weekly benefit equal to the average weekly wage.

Tenn. Code Ann. (Bobbs-Merrill) § 50-902 (1977) [now codified at Tenn. Code Ann. § 50-6-102 (1983)]

In chapters 9 through 12 of this title, unless the context otherwise requires:

* * * * *

(d) "Injury" and "personal injury" shall mean an injury by accident arising out of and in the course of employment which causes either disablement or death of the employee and shall include occupational diseases arising out of and in the course of employment which cause either disablement or death of the employee.

Tenn. Code Ann. (Bobbs-Merrill) § 50-908 (1977) [now codified at Tenn. Code Ann. § 50-6-108 (1983)]

The rights and remedies herein granted to an employee subject to the Workmen's Compensation Law on account of personal injury or death by accident, including a minor whether lawfully or unlawfully employed, shall exclude all other rights and remedies of such employee, his personal representative, dependents, or next of kin, at common law or otherwise, on account of such injury or death.

Tenn. Code Ann. (Bobbs-Merrill) § 50-914 (1977) [now codified at Tenn. Code Ann. § 50-6-112 (1983)]

When the injury or death for which compensation is payable under the Workmen's Compensation Law was caused under circumstances creating a legal liability against some person other than the employer to pay damages, the injured workman, or his dependents, shall have the right to take compensation under such law, and such injured workman, or those to whom his right of action survives at law, may pursue his or their remedy by proper action in a court of competent jurisdiction against

such other person. In the event of a recovery from such other person by the workman, or those to whom his right of action survives, by judgment, settlement, or otherwise, the attorney representing such injured workman, or those to whom his right of action survives, and effecting said recovery, shall be entitled to a reasonable fee for his services, and said attorney shall have a first lien therefor against said recovery; provided, however, that if the employer has engaged other counsel to represent the employer in effecting recovery against such other person, then a court of competent jurisdiction shall, upon application, apportion said reasonable fee between the attorney for the workman and the attorney for the employer, in proportion to the services rendered.

In event of such recovery against such third person by the workman, or by those to whom his right of action survives, by judgment, settlement, or otherwise, and the employer's maximum liability for workmen's compensation under chapters 9 through 12 of this title has been fully or partially paid and discharged, the employer shall have a subrogation lien therefor against such recovery and the employer may intervene in any action to protect and enforce such lien. Provided, further, that in event said net recovery by the workman, or by those to whom his right of action survives, exceeds the amount paid by the employer, and the employer has not, at said time, paid and discharged his full maximum liability for workmen's compensation under chapters 9 through 12 of this title, the employer shall be entitled to a credit on his future liability, as it accrues, to the extent the net recovery collected exceeds the amount paid by the employer. Provided further, however, that in event the workman, or those to whom his right of action survives, effects a recovery, and collection thereof, from such other person, by judgment, settlement,

or otherwise, without intervention by the employer, the employer shall, nevertheless, be entitled to a credit on his future liability for workmen's compensation, as it accrues under chapters 9 through 12 of this title, to the extent of said net recovery.

Such action against such other person by the injured workman, or those to whom his right of action survives, must be instituted in all cases within one (1) year from the date of injury. Failure on the part of the injured workman, or those to whom his right of action survives, to bring such action within said one (1) year period shall operate as an assignment to the employer of any cause of action in tort which the workman, or those to whom his right of action survives, may have against any other person for such injury or death, and such employer may enforce same in his own name or in the name of the workman, or those to whom his right of action survives, for such employer's benefit, as such employer's interest may appear, and the employer shall have six (6) months after such assignment within which to commence such suit.

Tenn. Code Ann. (Bobbs-Merrill) § 50-917 (1977) [now codified at Tenn. Code Ann. § 50-6-115 (1983)]

If an employee, while working outside the territorial limits of this state, suffers an injury on account of which he, or in the event of his death, his dependents, would have been entitled to the benefits provided by this law had such injury occurred within this state, such employee, or in the event of his death resulting from such injury, his dependents, shall be entitled to the benefits provided by the law, provided that at the time of such injury: (a) the employment was principally localized within this state or (b) the contract of hire was made in this state.

Tenn. Code Ann. (Bobbs-Merrill) § 50-1005 (1977) [now codified at Tenn. Code Ann. § 50-6-205 (1983)]

No compensation shall be allowed for the first seven (7) days of disability resulting from the injury, excluding the day of injury, except the benefits provided for in § 50-1004, but if disability extends beyond that period, compensation shall commence with the eighth day after the injury. In the event, however, the disability from the injury exists for a period as much as fourteen (14) days, then compensation shall be allowed beginning with the first day after the injury.

The total amount of compensation payable under this chapter shall not exceed forty thousand dollars ($40,000) in any case, exclusive of medical, hospital and funeral benefits. Compensation shall be paid promptly, the first payment shall be due and payable within fifteen (15) days after the employer has knowledge of any disability or death and thereafter compensation shall be paid to the employee or his dependents semimonthly. Any employer or his insurance carrier who fails to pay compensation as herein provided shall suffer a penalty of six per cent (6%) on any unpaid instalments.

Upon making the first payment of benefits, and upon stopping or changing such benefits for any cause other than final settlement, or upon denying a claim after proper investigation, the employer's insurance carrier or the employer, if self-insured, shall immediately notify the director, on a form prescribed by him, that the payment of income benefits has begun or has been stopped or changed. Failure to file such notice shall be a misdemeanor and shall upon conviction be punishable by a fine of not more than fifty dollars ($50).

If payments have been made without an award, and the employer subsequently elects to controvert his liability, notice of controversy shall be filed with the director within fifteen (15) days of the due date of the first omitted payment. Failure to file such notice shall be a misdemeanor and shall upon conviction be punishable by a fine of not more than fifty dollars ($50). In such cases the prior payment of the compensation shall not be considered a binding determination of the obligations of the employer as to future compensation payments. Likewise, the acceptance of compensation by the employee shall not be considered a binding determination of the obligations of the employer as to future compensation payments; nor shall the acceptance of compensation by the employee be considered a binding determination of his rights.

Tenn. Code Ann. (Bobbs-Merrill) § 50-1007 (1977) [now codified at Tenn. Code Ann. § 50-6-207 (1983)]

The following is the schedule of compensation to be allowed employees under the provisions of the Workmen's Compensation Law:

(a) Temporary Total Disability. For injury producing temporary total disability, sixty-six and two thirds per cent (66 2/3%) of the average weekly wages as defined in this chapter, subject to a maximum compensation of one hundred dollars ($100.00) per week and a minimum of fifteen dollars ($15.00) per week; provided that if the employee's average weekly wages are fifteen dollars ($15.00) or more per week he shall receive not less than fifteen dollars ($15.00) per week; and provided further, that if his average weekly wages are less than fifteen dollars ($15.00) per week he shall receive the full amount of his average weekly wages, but in no event shall the compensation paid be less than fifteen dollars ($15.00) per week. Where a

fractional week of temporary total disability is involved the compensation for each day shall be one seventh (1/7) of the amount due for a full week.

* * * * *